

UNITED STATES PATENT AND TRADEMARK OFFICE

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PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG KUSCHKE,
HARDIAL SINGH GILL and WILLIBALD KONRATH

Application 09/095,397

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on October 9, 2002. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith returned to the examiner. The matters requiring attention prior to docketing are identified below.

An examination of the file reveals that an Information Disclosure Statement (IDS) was filed June 10, 1998 (Paper No. 2). It is not apparent from the record whether the examiner considered the statement submitted or notified appellants of why their submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98. A communication notifying appellants of the Primary Examiner's decision is required. It should be noted that a second IDS was filed on November 19, 1998 (Paper No. 4). This IDS was signed and dated 10-19-99 but was not included as part of an attachment to an Office action.

On March 27, 2002, appellants filed a Request for Reconsideration (Paper No. 27) which included on page 2 a request that the specification be amended as attached (see page 7). The Examiner's Answer mailed July 16, 2002 (Paper No. 31) states that "[t]he amendment after final rejection filed on 3-27-02 has been entered." A review of the record indicates the amendment was not entered.

On December 30, 1999, appellants filed an amendment (Paper No. 8) requesting the addition of claim 8 and amendments to claims 1 and 7. It is noted that the language of claims 1 and 7 in the Appendix to the Appeal Brief filed June 11, 2002

(Paper No. 30) differs from its last amended version. 37 CFR § 1.192(c)(9) (2001) requires that the Appendix to the Appeal Brief contain a correct copy of the claims involved in the appeal.

Finally, on May 14, 2002, appellants filed a Notice of Appeal (Paper No. 29) and an extension of time with a request that these fees be charged to their Deposit Account. It is noted that these fees have not been charged.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1. for consideration of the IDS filed June 10, 1998 (Paper No. 2) and appropriate notification to appellants regarding the Primary Examiner's decision;
2. for entry of the amendment to the specification filed March 27, 2002 (Paper No. 27) and for written notification to appellants of the action taken;
3. for notification to appellants to submit a corrected Appendix to the Appeal Brief filed June 11, 2002 (Paper No. 30) to replace the existing defective Appendix, or for the

examiner to issue a supplemental Examiner's Answer to officially correct claims 1 and 7;

4. for charging the Notice of Appeal fee and Extension of Time fee as requested in Paper No. 28 to appellants' Deposit Account; and

5. for such further action as may be appropriate.



DALE SHAW
Program and Resource Administrator
(703) 308-9797

cc: Striker Striker & Stenby
103 East Neck Road
Huntington, NY 11743

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